

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 6, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re EA Systems Inc.

Serial No. 75/131,147

Andrew P. Bridges, Joshua D. Thomas and Diane E. Turriff of
Wilson, Sonsini, Goodrich & Rosati for applicant.

Glenn G. Clark, Trademark Examining Attorney, Law Office
102 (Thomas V. Shaw, Managing Attorney).

Before Cissel, Walters and Chapman, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

EA Systems Inc. has filed a trademark application to
register the mark PLANTBROWSER for "computer software, and
manuals sold as a unit, for computer aided design, the
design or engineering of industrial or manufacturing

facilities, or data extraction, querying, searching or analysis.”¹

The Trademark Examining Attorney has finally refused registration, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant’s mark is merely descriptive of its goods.

Applicant has appealed. Both the applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Citing dictionary definitions of the individual terms, PLANT and BROWSER, and referring to information about applicant’s product obtained from an excerpt of an article from the LEXIS/NEXIS database and from applicant’s own promotional material, the Examining Attorney contends that the individual terms PLANT and BROWSER are merely descriptive of the nature and function of the software identified in the application. The Examining Attorney contends, further, that the combination of these two terms into a single word in the applied-for mark does not alter the descriptive connotation or meaning of the individual words in connection with the identified goods. In support of his position, the Examining Attorney submitted

¹ Serial No. 75/131,147, in International Class 9, filed July 8, 1996, based on an allegation of a bona fide intention to use the mark in commerce.

definitions of PLANT and, from computer dictionaries, of BROWSER. He also submitted, with his brief, definitions of BROWSER from recent standard, non-computer dictionaries, and we take judicial notice of these definitions.

Additionally, the Examining Attorney submitted copies of excerpts of articles from the LEXIS/NEXIS database in support of his position.²

Applicant contends that PLANTBROWSER is suggestive; that both of the individual terms, PLANT and BROWSER, have numerous different meanings; that the most common noun meaning of PLANT is vegetation; that most general dictionaries do not include computer-related meanings for BROWSER; and, further, that in the computer field there is no uniform definition of BROWSER. Applicant concludes that, because its mark is capable of multiple meanings, consumers must "exercise a significant degree of imagination to comprehend the nature of applicant's goods." In support of its position, applicant listed, in its responses to the Examining Attorney, a number of third-

² A number of the excerpts are relevant to, and probative of, the issues before us. However, we note that a number of the excerpts are irrelevant (e.g., references to "plants" in the context of horticulture, and to mastodons that are "browsers"). Further, a number of the articles are from newswire services and are, therefore, of little probative value. Finally, even the relevant excerpts are somewhat limited in value by the fact that the excerpts are extremely short. In particular, there is so little text from the article referring to applicant that it is difficult to draw conclusions from this excerpt.

party registrations and applications for marks that include either the term PLANT or BROWSER, allegedly for computer related products.³

Applicant argues that the lack of evidence of competitors' uses of the terms PLANT and BROWSER in combination to describe products in the same field as applicant's products "confirms the fact" that the mark is only suggestive in relation to the identified goods and, further, that registration of applicant's mark will not deprive competitors of the ability to effectively communicate the nature of their products to customers. In support of its position, applicant submitted a standard dictionary definition of BROWSER, a copy of an article about applicant's products in a professional newsletter, and a copy of applicant's promotional literature.

The test for determining whether a mark is merely descriptive is whether the involved term immediately conveys information concerning a quality, characteristic,

³ Although applicant did not properly make these registrations of record in this case by submitting copies of the registrations from the records of the Patent and Trademark Office, the Examining Attorney did not object to these registrations on this ground. Therefore, we consider this list to be of record. However, having said this, we find this list to be of extremely limited probative value, as we have no information regarding whether the registrations include any disclaimed matter or Section 2(f) claims, whether the marks are on the Principal or Supplemental Registers, and the exact nature of the identified goods. Further, they are of limited value, as each case must be decided on the particular facts therein.

function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We agree with the Examining Attorney and find that the evidence supports the conclusion that the individual words, PLANT and BROWSER, and the combination thereof, PLANTBROWSER, are merely descriptive in connection with the identified goods. PLANT obviously has a number of definitions listed in the *Webster's Ninth New Collegiate Dictionary* of record, including the following: "a the land, buildings, machinery, apparatus, and fixtures

employed in carrying on a trade or an industrial business, b a factory or workshop for the manufacture of a particular product, c the total facilities available for production or service." BROWSER is defined as "a program that lets you look through data"⁴ and "a client program used to view Web documents."⁵ The excerpts of articles from the LEXIS/NEXIS database demonstrate the use of these two terms as defined herein in various articles. Further, applicant has submitted literature about its product, including its own promotional brochure, describing its company as providing "software and services for designing and engineering complex industrial process and power plants, and managing information over the operating life of plant facilities"⁶; and describing its PLANTBROWSER product as software that "integrates into the Microsoft Internet Server and provides access to PASCE databases for Internet/intranet-enabled plant engineering in real-time for multiusers"⁷ and "enable[s] PASCE application access via Intranet/Internet

⁴ *The Computer Desktop Encyclopedia* (undated). The better practice is for the Examining Attorney to include in his submissions of copies of publications, the page indicating the date of publication. In the present case we find these dictionary definitions probative. They support the obvious connotation of the term as it appears in the LEXIS/NEXIS excerpts.

⁵ *The Internet Dictionary* (undated).

⁶ *A-E-C Automation Newsletter* (June 1997).

⁷ *Id.*

standards ... utilizes Web-based techniques for 3D model visualization, regardless of viewing platform.”⁸ There is no question that PLANT and BROWSER merely describe significant features of the goods as identified. Clearly, the combination of the words “PLANT” and “BROWSER” into the term “PLANTBROWSER” has a meaning that ordinary usage would ascribe to those words in combination. In other words, PLANTBROWSER merely describes the fact that applicant’s identified product allows the user to search, extract, query or analyze data pertaining to design and management of plant facilities. The fact that such term is not found in the dictionary is not controlling on the question of registrability. *See, In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed Cir. 1987) and *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977).

Applicant’s arguments to the contrary are not well taken. It is irrelevant that PLANT and BROWSER may have multiple meanings because, as we have already stated, we must consider the mark in connection with the identified goods. Further, the fact that applicant will or intends to be the first entity to use the term PLANTBROWSER in connection with its goods is not dispositive where, as

⁸ Applicant’s brochure regarding its “Plant Design and Lifecycle Data Management” products.

here, such term unequivocally projects a merely descriptive connotation. *See, In re MBAssociates*, 180 USPQ 338, 339 (TTAB 1973).

In the present case, it is our view that, when applied to applicant's goods, the term PLANTBROWSER immediately describes, without conjecture or speculation, the nature and function of applicant's goods. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term PLANTBROWSER as it pertains to applicant's computer software and manuals.

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.

R. F. Cissel

C. E. Walters

B. A. Chapman
Administrative Trademark Judges,

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